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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,910	11/26/2003	Roberto Lucci	1881-0165	1175

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EXAMINER	
GARRETT, ERIKA P	

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/723,910	LUCCI ET AL.	
	Examiner	Art Unit	
	Erika Garrett	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-4,9,10,15,17,18,20,21,23,24,27,29-31 and 35-37 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-3,9-10,15,23-24,27,29-30 and 35-37 is/are rejected.

7)☒ Claim(s) 4,17,18,20,21 and 31 is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,15,17, 27,and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,16, 29 of U.S. Patent No. 6,722,735. Although the conflicting claims are not identical, they are not patentably distinct from each other because when claims (1 &15) and (27 &29) are combined the claimed subject matter in the present invention is taught in the above claims of the aforementioned patent. The claimed subject matter of the present invention is the same as that which is taught in the above patent, but with broader or slightly different language or terms.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,15 and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ambasz (4,046,422). Ambasz discloses the use of a chair comprising a seat member having a seat back (22), seat bottom (20), and a intermediated portion (119) connected between the seat back and seat bottom, and a bottom support member (36) having a surface slidably supporting the seat bottom, a seat back support member connected to the bottom support member and the seat back, a pivot element (80) connected to the seat back support member and pivotably supporting the seat back; wherein the intermediate portion deforms as the seat back pivots about the pivot element and the pivot element and the seat bottom slides along the bearing surface in response to the deformation of the intermediate portion (this is inherently carried out when the occupant sits in the seat). In regards to claim 15, bottom support member includes at least one ground engaging leg (26), and at least one elongated bar (24) connected to and supported by the leg, at least one elongated bar defining the bearing surface; and the seat bottom includes at least one slide block attached thereto, said at least one slide block defining a channel for slidably receiving said at least one elongated bar. In regards to claim 23, the intermediate portion (119) includes a slack region that is recessed relative to a plane including the seat back. In regards to claim 24, the intermediate portion has a reduced width less than a largest width of the seat back. The applicant attention is drawn to figures 1-6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2,27, 29,30 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ambasz in view of Matte (5,076,646). Ambasz shows the use of all the claimed invention but fails to show the use of all the claimed invention but fails to show the use of a seat member being a one-piece shell. Matte teaches the use of a one- piece shell (10). It would have been obvious to one of ordinary skill in the art at the time of invention to modify a chair with a one-piece shell as taught by Matte, in order to provide comfort to the occupant when in the seated position.

Claims 3 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ambasz in view of Perry (5,338,094). Ambasz shows the use of all the claimed invention but fails to show the use of a support bar spanning at least a portion of the seat back and a mounting pad defining a recess configured to pivotably engage said support bar. Perry teaches the use of a support bar (30) spanning at least a portion of the seat back and a mounting pad (17) defining a recess configured to pivotably engage said support bar, see figures 1-2.

Allowable Subject Matter

Claims 4,17-18,20-21 and 31 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 08/10/04 have been fully considered but they are not persuasive.

In response to applicant's argument that *"Ambasz does not teach a seat bottom slides along a bearing surface in response to deformation of its intermediate portion"*, a recitation of the intended use of the claimed invention must result in **a structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. **If the prior art structure is capable of performing the intended use, then it meets the claim.** The examiner is of the opinion that once the occupant sits in the seat bottom of Ambasz, the sliding along the surface in response to deformation of its intermediate portion is inherently carried out, see figures 3a-3b. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's arguments that Ambasz *"teaches away from any inherent connection between movement of the seat back and bottom and deformation of the intermediate tube"*, applicant is directed to the above rejection and figures 1-3b.

The examiner is of the opinion that Ambasz seat back and seat bottom is connected by the intermediate portion (119), and the deformation is shown on figures 3a-3b.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peter M. Cuomo
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EG
November 1, 2004